

CHIPPEWA CREE TRIBE OF THE ROCKY	:	Order Affirming Decision
BOY'S RESERVATION,	:	
Appellant	:	
v.	:	
	:	Docket No. IBIA 92-191-A
ACTING BILLINGS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	December 22, 1992

This is an appeal from an April 22, 1992, decision of the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), denying appellant's application for a FY 1992 Planning Grant. For the reasons discussed below, the Board affirms the Area Director's decision.

The availability of funding for the FY 1992 Planning Grant program was announced in the Federal Register on January 2, 1992. 57 FR 160. Appellant submitted an application pursuant to that announcement. By letter dated April 22, 1992, the Area Director informed appellant:

Upon receipt of your application, it was reviewed for consistency and rated based on the criteria set forth in Section C(1) through C(5) of this announcement.

Upon completion of the review and rating, your application has been disapproved as it does not include any/all of the criteria requested in C(2)(a) and (b); Budget does not adequately explain out of state travel, and computer related costs; monitoring of project not addressed, except for fiscal matters.

The Area Director reiterated this decision in a letter dated June 2, 1992. Appellant appealed to the Board from the second letter. 1/

Appellant contends that the Federal Register announcement did not state that the eligibility criteria in section C(2) were to be addressed in applications for the program. It argues that if the eligibility criteria were required to be addressed in an application, they should have been

1/ The Area Director's April 22 decision failed to inform appellant that it could appeal the decision to the Board. Under 25 CFR 2.7, appellant's time to appeal did not begin to run until it was given correct appeal information.

listed in section C(4) "Application Content." Appellant states that it received a planning grant last year after submitting an application substantially similar to its FY 1992 application, even though the FY 1991 guidelines were the same as the FY 1992 guidelines. Appellant asks: "If the items listed in C(2)(a) and (b) were supposed to be part of the application, then why did we receive a planning grant in [1991]?" (Appellant's Notice of Appeal at 1).

The Federal Register announcement informed applicants of the criteria upon which their applications would be rated. The first criterion listed was "Eligibility," for which up to 30 points could be awarded. This criterion provided: "The applicant can document or demonstrate it meets the eligibility criteria in section C.2(a) and, if the application encompasses activities identified as reservation resources development, at least one of the additional criteria in section C.2(b) of the Planning Grant program." 57 FR at 163. Appellant was thus on notice that it was required to demonstrate its eligibility for a grant under the program.

The fact that appellant received a planning grant in FY 1991, based upon an application similar to its present one, is of no particular consequence. It is apparent that, under the Planning Grant Program, "eligibility" is not a threshold requirement but, rather, simply one of several ranking criteria. In a competitive grant program, an applicant's success depends, not only upon the merit of its own application, but also upon the comparative merit of the other applications submitted. Appellant may well have received a grant in FY 1991 simply because the competition was not as formidable that year as it was in FY 1992. The Board finds that appellant has not shown the Area Director erred in downgrading its application because of its failure to demonstrate adequately its eligibility for the program.

Next, appellant discusses its budget items for out-of-state travel and computer-related costs, providing additional explanation of those items.

The Board cannot consider this new information. In a competitive grant program, BIA has a duty to give fair and equitable consideration to all grant applicants. Therefore, it can consider only the information and supporting documents included with the original grant application. Because BIA would be precluded from considering such additional information, the Board is also precluded from doing so. E.g., Nooksack Indian Tribe v. Deputy Commissioner of Indian Affairs, 21 IBIA 155 (1992).

Finally, appellant disputes the Area Director's finding concerning monitoring. Appellant contends that non-fiscal monitoring was adequately addressed in a section of its application containing summaries of activities to be undertaken under the grant.

The Federal Register announcement required that "[a] tribe's application for the purpose of planning must clearly outline a monitoring schedule for planning activities." Section C(5)(a). The rating criterion

"Management or Self-Monitoring System," for which up to 15 points could be awarded, provided: "The application indicates how the grantee will monitor progress in achieving grant objectives and how corrective action will be taken, if necessary." 57 FR at 163.

Upon review of appellant's application, the Board finds no specific discussion of non-fiscal monitoring, either in the section cited by appellant, or elsewhere.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's April 22, 1992, decision is affirmed. 2/

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge

2/ Appellant devotes a large part of its brief to demonstrating that it had submitted other items required by section C(4) of the Federal Register announcement. Since these items are not at issue here, the Board does not address them.